

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

IN RE DIRECTIVES PURSUANT TO SECTION)
105B OF THE FOREIGN INTELLIGENCE)
SURVEILLANCE ACT.)

Docket No. 105B(g) 07-01

ORDER

This matter is before the Court on the “Provider’s Unclassified Motion Under FISC Rule 62 for Publication of this Court’s Decision and Other Records,” submitted by Yahoo!, Inc. (“Yahoo!” or “Provider”) on June 14, 2013. The U.S. Department of Justice filed a response to the motion on June 25, 2013, and the Provider filed a reply on July 9, 2013.

The Provider seeks to make public additional information about this case

in light of: (a) recent declassification decisions by the Director of National Intelligence (“DNI”); (b) the current controversy surrounding the use of directives issued under Section 702 of the [Foreign Intelligence Surveillance Act (“FISA”), as amended] and under Section 105B of . . . the Protect America Act of 2007 (“PAA”), and (c) recently-filed litigation regarding the constitutionality of Section 702.

Motion at 1-2. Specifically, Provider requests that the Court “publish its decision and allow public release of the briefs filed by Provider and the Government.” *Id.* at 2. To that end, Provider seeks an order “designating this decision for publication” and “direct[ing] the Executive Branch to review the opinion and redact as appropriate for publication.” Motion at 4. Although the Motion does not, in so many words, request that the Court order the Government to conduct a

declassification review of the parties' legal briefs,¹ such request is fairly implied in the circumstances of this case by Yahoo's request that the Court "allow public release" of those briefs. See In re Directives Pursuant to Section 105B of the Foreign Intelligence Surveillance Act, 551 F.3d 1004, 1017 (FISA Ct. of Rev. 2008) (under sealing order applicable to this case, "[n]o party or counsel . . . shall disclose publicly . . . any classified information pertaining to this case"); FISC Rule 3 ("In all matters, the Court . . . shall comply with . . . Executive Order 13526, 'Classified National Security Information' (or its successor)."²

In its Response, the Government took "no position" on whether the opinion should be published, with the understanding that there would be "a review by the Government to allow for properly classified information to be redacted before publication." Response at 1. The Government undertook to "conduct such a review upon the Court's request." Id.

Upon consideration of the parties' submissions and the June 28, 2013 Court of Review Order, and after consultation among the judges of this Court pursuant to FISC Rule 62(a), it is **HEREBY ORDERED** as follows:

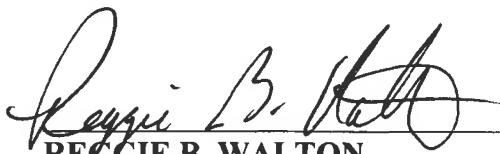
¹ Yahoo!'s Reply did explicitly ask the Court to order the Government to conduct a declassification review of the parties' legal briefs. Reply at 1, 6.

² The Motion also asked the Court to "direct the Executive Branch to revisit the classification of Provider and its counsel's identity" and "publish this instant motion in the Court's public docket." Motion at 4 (emphasis in original). The Government has since advised the Court that it has declassified Yahoo!'s identity as the Provider in this case, see Response at 1-2, and the Court has published the Motion, which identifies Yahoo!'s counsel, on its public docket at <<http://www.uscourts.gov/uscourts/courts/fisc/index.html>>. See also In re Directives Pursuant to Section 105B of the Foreign Intelligence Surveillance Act, Docket No. 08-01, Order issued on June 28 2013, at 2 (FISA Ct. Rev.) ("June 28, 2013 Court of Review Order") (in light of Government's statement that Yahoo!'s involvement in this litigation "can now be declassified," the Court "no longer considers the identities of the Provider or its counsel to be covered by this Court's sealing order"), attached as exhibit to Yahoo!'s Reply.

1. The Government shall conduct a declassification review of (a) this Court's Memorandum Opinion of April 25, 2008, and (2) the legal briefs submitted by the parties to this Court in this matter. After such review, the Court anticipates publishing that Memorandum Opinion in a form that redacts any properly classified information.

2. The Government shall report to the Court by July 29, 2013, with estimated dates by which it will be able to complete its review of the two categories of documents identified above. Priority should be given to the review of this Court's Memorandum Opinion.

SO ORDERED, this 15th day of July, 2013.


REGGIE B. WALTON
Judge, United States Foreign
Intelligence Surveillance Court